IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1816 OF 2005

M/s.Su Dagadu Teli Chandwadkar
& Sons & Ors. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

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Mrs.S.A.Dhamale for Petitioners.

Mrs.M.M.Deshmukh, A.P.P. for Respondent No.1.

Mr.Rahul Chitnis with Mr.Ramesh Gajria i/b
Gajria & Co. for Respondent No.2.

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**CORAM: A.M.KHANWILKAR, J.**

**NOVEMBER 24, 2005.**

**P.C.**

1. Two contentions have been raised before this Court. The first argument is that the complaint as filed records that the complainant has registered trade mark; whereas, during verification, the Complainant has deposed that its trade mark is unregistered. The second limb of

this argument is that the Petitioners had taken search in the records of the Registrar of Trade Marks on 24th February 2003 when it transpired that no trade mark identical with or deceptively similar to the one in question has been registered under the Act of 1999 or that no application has been made under the said Act for registration by any person other than the Petitioners who have applied for registration thereof. It is therefore the argument of the Petitioners that no prosecution in respect of the attempt of the Petitioners to get the trade mark registered can be proceeded under Section 103 of the Act of 1999. In my opinion, the above argument is rightly countered by the Respondent No.2/complainant relying on the decision of the Apex Court in the case of **State of U.P. vs. Ram Nath reported in A.I.R. 1972 Cri.L.J. 232**. In Paragraph 6 of the said decision, on analysing he relevant provisions of the Old Act, Section 77 and 78 which are parimateria same as Sections 102 and 103 of the present Act, it has been noted that the said provision applied to trade mark whether it is registered or unregistered. If this exposition is to be applied to the case on hand, the fact

stated in the complaint and in the verification regarding registration, though inconsistent, will make no difference to the outcome of the proceedings. Besides, although the Petitioners may be justified in relying on the communication and certificate issued by the concerned authorities, even that will be of no avail because prosecution under Section 103 can proceed in relation to even unregistered trade mark. Rest of the issues will have to be resolved at the trial and cannot be the basis to quash the proceedings pending against the Petitioners.

2. Lastly, it is contended that Petitioners 7 and 8 have no causal connection with the activities of other Petitioners and therefore, those Petitioners cannot be proceeded against for alleged offence under Section 103 of the Act. In the first place, no such argument was canvassed before the Court below. In any case, it will be open to the said Petitioners to apply before the Trial Court at the appropriate stage of the proceedings for such relief, as may be advised. Counsel for the Respondent No.2 fairly submits that if such

application was to be moved by Petitioners 7 and 8, the same will be contested on merits as may be available to the said Petitioners and not on technical argument that such a plea was not raised before the lower Court on the earlier occasion and cannot be permitted to be raised on that account.

3. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.